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NORTH-WEST TERRITORIES.

Crown Practice of the Supreme Court.

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CROWN PRACTICE

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OF THE

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CROWN PRACTICE
OF THE
SUPREME COURT
OF THE
NORTH-WEST TERRITORIES.

RULES OF COURT REGULATING THE PLEADING, PRACTICE AND PROCEDURE OF THE SUPREME COURT OF THE NORTH-WEST TERRITORIES IN RELATION TO MANDAMUS, CERTIORARI, HABEAS CORPUS, PROHIBITION, QUO WARRANTO BOTH IN CRIMINAL AND CIVIL MATTERS AND COSTS IN SUCH MATTER.

CUSTODY OF PAPERS.

1. The Deputy Clerk of the Supreme Court in each Deputy Clerk's District shall have the care and custody of the records and other proceedings in matters arising in his district and the Clerk of the Judicial District in all matters arising in the remaining portion of the Judicial District.

CERTIORARI.

2. Subject to the provisions of this Rule being dispensed with as hereinafter provided, no motion to quash any conviction, order or other proceeding by or before a Justice or

Justices of the Peace and brought before the Supreme Court of the North-West Territories or any Judge thereof, by *certiorari*, shall be entertained by such Court or Judge, unless the defendant is shown to have entered into recognizance in \$200.00 with one or more sufficient sureties, before a Justice of the Peace and deposited the same with the Registrar or the Clerk of the Court, as the case may be, or to have made a deposit with the said Registrar or Clerk of \$100.00 in either case, with a condition to prosecute such motion and writ of *certiorari* at his own costs and charges with effect and without any wilful or affected delay, and if ordered to do so, to pay to the person in whose favour the conviction, order or other proceeding is affirmed his full costs and charges to be taxed according to the course of this court, where such conviction, order, or proceeding is affirmed. R.S.C. N.W.T. 23.

3. The summons or notice of motion for a writ of *certiorari* shall be served upon the Justice or one of the Justices who made the conviction or order and upon the person who put the proceedings attacked in motion, unless the Judge or Court shall upon such application otherwise direct.

4. The summons or notice of motion may also ask that the proceedings attacked be quashed without the actual issue of the writ but in this case the person who put the proceedings attacked in motion shall be one of the persons to be served and a Judge may in such case dispense with the giving of security required by Rule 23.

5. No such application shall be made or allowed after the expiration of six months from the date of the judgment, conviction or order attacked and no notice to the Justices or the person who put the proceedings attacked in motion prior to such application shall be necessary.

6. On an application for a *certiorari* to remove a judgment, conviction or order the Court or Judge may order such judgment, conviction or order to be quashed without the actual issue of the writ of *certiorari* and if such person is in custody under any warrant or other process issued on such judgment, conviction or order, the Court or a Judge may in granting such order for a writ of *certiorari* or to quash such judgment, conviction or order at any time after said order is granted, order him to be discharged from custody absolutely or on his giving such security as the Court or Judge shall direct, that if the said judgment, conviction or order is confirmed or the application for the writ of *certiorari* is dismissed or the writ of *certiorari* is quashed, he will comply with the provisions thereof and pay the fine or penalty imposed, and in case of imprisonment without fine that he will forthwith surrender himself into the same custody and undergo the remainder of his imprisonment notwithstanding the term limited for his imprisonment shall have expired. If the recognizance shall be forfeited a warrant for the apprehension of the defendant may be granted by a Judge, which shall authorize his arrest and imprisonment for the unexpired term. N.S. 37.

QUO WARRANTO.

7. No information in the nature of a *quo warranto* except an *ex-officio* information shall be granted with leave of a Court or Judge unless at the time of application for such leave an affidavit be produced by which some person shall depose on oath that such application is made at his instance as relator ; and such person shall be deemed to be the relator in case order shall be made, and shall be named as such relator in such information in case the same shall be filed unless the Court or Judge shall otherwise order. N.S. 48.

8. Every objection intended to be made to the title of a defendant on an information in the nature of a *quo warranto* shall be specified in the summons or notice of motion, and no objection not so specified shall be raised by the relator on the pleadings without the special leave of the Court or Judge. N.S. 49.

9. The Court or Judge may refuse the application for an information in the nature of a *quo warranto* with or without costs, and in its discretion may, upon such notice as may be just, direct the costs to be paid by the solicitor or other parties joining in the affidavits in support of the application although he is not the proposed relator. N.S. 50.

10. A new relator may by leave of the Court or Judge be substituted for the one who first entered into the recognizance on special circumstances being shown. N.S. 51.

11. Where several applications for informations in the nature of a *quo warranto* have been given against several persons for the usurpation of the same office and all upon the same or like grounds of objection the Court or Judge may order such applications to be consolidated, and only one information to be filed in respect of all of them or may order all proceedings to be stayed upon all but one, until judgment be given in that one, provided always that no order be made to consolidate or stay any proceedings against any defendant unless he give an undertaking to disclaim if judgment be given for the crown upon the information which proceeds. N.S. 52.

12. If the defendant in an information in the nature of a *quo warranto* does not intend to defend, he may, to prevent judgment by default, file a disclaimer in the office of

MANDAMUS

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the Clerk or Deputy Clerk of the Court, as the case may be, and deliver a copy to the relator or his solicitor. Upon the disclaimer being filed judgment of ouster may be entered and the costs taxed as in judgment by default. N.S. 53.

MANDAMUS.

13. The summons or notice in the case of an application for a prerogative writ of *mandamus* shall be served upon every person who shall appear to be interested or likely to be affected by the proceedings. The Court or Judge may direct notice to be given to any other person or persons and adjourn the hearing for that purpose. N.S. 55.

14. Any person whether he has been so served or not who can make it appear to the Court or Judge that he is affected by the proceeding for a writ of *mandamus* may show cause against the application and shall be liable to costs in the discretion of the Court or Judge if the order should be made or the prosecutor obtain judgment. N.S. 56.

15. The order for a *mandamus* need not be served but the cost of service of the order may be allowed in the discretion of the taxing officer, where the writ is not issued. N.S. 57.

16. The Court or Judge may if deemed proper order that any writ of *mandamus* shall be peremptory in the first instance. N.S. 60.

17. Every writ of *mandamus* shall bear date on the day when it is issued. The writ may be made returnable forthwith or time may be allowed to return it, either with or without terms, as to the Court or Judge shall think fit. N.S. 61.

18. Any person by law compellable to make return to a writ of *mandamus* shall make his return to the first writ. N.S. 62.

19. Where a point of law is raised in answer to a return or any other pleading in *mandamus*, and there is no issue of fact to be decided, the Court or Judge shall, on the argument of the point of law, give judgment for the successful party, without any motion for judgment being made or required. N.S. 63.

20. Where the applicant obtains judgment he shall be entitled forthwith to a peremptory writ of *mandamus* to enforce the command contained in the original writ, and the judgment shall direct that a peremptory writ do issue. N.S. 64.

21. No action or proceeding shall be commenced or prosecuted against any person in respect of anything done in obedience to a writ of *mandamus* issued by the Court or any Judge thereof. N.S. 65.

22. When it appears to the Court or Judge that the respondent claims no right or interest in the subject matter of the application or that his functions are merely ministerial, the return to the writ and all subsequent proceedings down to judgment shall still be made and proceed in the name of the person to whom the writ is directed, and if the Court or Judge thinks fit so to order may be expressed to be made on behalf of the persons really interested therein. In that case the persons interested shall be permitted to frame the return and conduct the subsequent proceedings at their own expense; and if judgment is given for or against the applicant it shall likewise be given against or for the persons on whose behalf the

return is expressed to be made ; and if judgment is given for them they shall have the same remedies for enforcing it as the person to whom the writ is directed would have in other cases. N.S. 66.

23. Where under the last preceding rule the return to a writ of *mandamus* is expressed to be made on behalf of some person other than the person to whom the writ is directed the proceedings on the writ shall not abate by reason of the death, resignation or removal from office of that person, but they may be continued and carried on in his name ; and if a peremptory writ is awarded it shall be directed to the successor in office or right of that person. N.S. 67.

24. No order for the issuing of any writ of *mandamus* shall be granted unless at the time of application an affidavit be produced by which some person shall depose upon oath that such application is made at his instance as prosecutor and if the writ be granted the name of such person shall be endorsed on the writ as the person at whose instance it is granted. N.S. 69.

PLEADINGS IN QUO WARRANTO.

25. When any information in the nature of a *quo warranto* has been filed, the defendant may plead to such information within such time and in like manner as if the information were a statement of claim delivered in an action, and where the judgment is for the relator judgment of ouster may be entered for him in all cases. N.S. 94.

26. The prosecutor in answer to a plea that the defendant has held and executed the office or franchise for six years before the exhibiting the information, may reply any forfeiture, surrender, or avoidance by the defendant within the said six years. N.S. 95.

PLEADINGS IN MANDAMUS.

27. When any return is made to the first writ of *mandamus* the applicant may plead to the return within such time and in like manner as if the return were a statement of defence delivered in an action.

PLEADINGS IN PROHIBITION.

28. Where pleadings in prohibition are ordered the pleadings and subsequent proceedings, including judgment and assessment of damages if any, shall be, as nearly as may be, the same as in an ordinary action for damages. N.S. 97.

JUDGMENT BY DEFAULT.

29. In case no statement of defence or other pleading shall be entered within the time limited the opposite party may file a note of such default in the proper office on the next following morning after the expiration of the time limited upon filing an affidavit showing such default unless an order of a Court or a Judge extending such time shall have been obtained and served, in which case such note shall not be filed until the day after the expiration of the time granted by such order, and after the filing of such note the party in default shall not without leave of the Court or Judge file any further pleading; but the party entering such note may make an application *ex parte* to the Court or Judge for such judgment as he may deem himself entitled to.

HABEAS CORPUS.

30. If a writ of *habeas corpus* be disobeyed by the person to whom it is directed, application may be made to the Court or a Judge on an affidavit of service and disobedience for an attachment for contempt.

31. The return of the writ of *habeas corpus* shall contain a copy of all the causes of the prisoner's detainer indorsed on the writ, or on a separate schedule annexed to it.

32. The return may be amended or another substituted for it by leave of the Court or Judge.

33. When a return to the writ of *habeas corpus* is made the return shall first be made and motion then made for discharging or remanding the prisoner, or amending or quashing the return.

34. On the argument of a motion or summons for a writ of *habeas corpus* the Court or Judge may in his or their discretion direct an order to be drawn up for the prisoner's discharge, instead of waiting for the return of the writ, which order shall be a sufficient warrant for any gaoler or constable, or other person, for his discharge.

GENERAL.

35. Application for a prerogative writ of *mandamus*, for a writ of *certiorari*, or order to quash proceedings without the actual issue of the writ, for a writ of *habeas corpus*, for prohibition or for an information in the nature of a *quo warranto* may be made either to a Judge in chambers or in court, or to the Court *En Banc*, provided that the Court or a Judge may, if it be deemed proper, grant *ex parte* an order for the immediate issue of a writ of *habeas corpus*.

36. Any writ may be served according to the rules relating to the service of writs of summons under the rules of the Supreme Court.

37. It shall not be necessary to serve the original of any writ, judgment, order or other proceeding but the

party served with a copy thereof shall be entitled to inspect the original at the time of service if he so demand.

38. All proceedings under these rules shall be entitled in the Court and shall be styled in the matter to which they relate so as to show the name of the applicant as informant relator, plaintiff, private prosecutor, or otherwise, according to the nature of the case and the name of the defendant, respondent or party against whom the application is made.

39. In all proceedings under these rules the costs shall be in the discretion of the Court or Judge who shall have full power to order either the applicant or the party against whom the application is made, or any other party to the proceedings, to pay such costs or any part thereof according to the result.

40. The proceedings for attachment for contempt, for disobedience of any writ, judgment, order issued or made under these rules shall conform as nearly as may be to proceedings for contempt, for disobedience of any writ, judgment or order in a civil action.

APPLICATION OF CERTIORARI, ORDERS AND RULES OF THE SUPREME COURT OF THE NORTH-WEST TERRITORIES.

41. The following rules and orders for the Supreme Court enacted by the Judicature Ordinance and any amendments thereto, shall as far as applicable apply to all proceedings in relation to said matters.

- (a) Order V. (Service of other proceedings.)
- (b) Rule 59. (Constitutional questions.)
- (c) Order XI. (Pleading generally.)

- (d) Order XIII. (Matters arising pending the action.)
- (e) Order XIV. (Raising points of law, &c.)
- (f) Order XV. (Reply and close of pleadings.)
- (g) Rule 169. (Setting down for trial.)
- (h) Rule 173. (Notice of trial.)
- (i) Rule 188. (Mistakes in judgment, &c.)
- (j) Order XIX. (Amendment.)
- (k) Order XX. (Discovery of document.)
- (l) Order XXI. (Examination for discovery.)
- (m) Order XXII. (Admissions.)
- (n) Order XXIV. (Special case.)
- (o) Order XXV. (Trial.)
- (p) Order XXVI. (Evidence, &c.)
- (q) Order XXVII. (Affidavits and depositions.)
- (r) Order XXIX. (Judgments and entry of judgment.)
- (s) Order XXX. (Execution.)
- (t) Order XXXI. (Discovery in aid of execution.)
- (u) Order XXXVII. (Interpleader.)
- (v) Order XXXIX. (Motions and applications.)
- (w) Order XL. (Applications in chambers generally.)
- (x) Order XLI. (Court *en Banc*.)
- (y) Order XLII. (III Taxation and tariff of costs.)
- (z) Order XLIII. (III *Ex parte* proceedings, non-compliance and irregularity.—
Time for service.)

Where no other provision is made by these rules the procedure and practice shall as far as may be, be regulated by the Crown Office Rules for the time being in force in England.

FORMS.

42. The forms for the time being in use in England under the said Crown Office Rules where applicable, and where not applicable, forms of the like character as near as may be shall be used in all proceedings except where otherwise ordered by these rules.

43. These rules may be cited as "The Crown Office Rules, 1903" and shall come into force on the first day of January, 1903.

Dated the 9th day of July, 1903.

(Signed) ARTHUR L. SIFTON, C.J.

" E. L. WETMORE, J.

" D. L. SCOTT, J.

" JAMES E. P. PRENDERGAST, J.

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